



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 9, 1998

Ms. Linda Wiegman
Supervising Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-0934

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114480.

The Texas Department of Health (the "department") received a request for the "Report of Contact" pertaining to Marshall Regional Medical Center Home Health of Marshall, Texas, a home and community support services agency licensed by the department. You assert that the requested information is excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 142.009 of the Health and Safety Code.¹

Section 552.101 of the Government Code excepts from disclosure information that is deemed confidential, including information that is made confidential by statute. Health and Safety Code section 142.009(c) authorizes the department to conduct investigations of complaints regarding the provision of home health, hospice, or personal assistance services. Section 142.009(d) provides as follows:

The reports, records, and working papers used or developed in an investigation made under [section 142.009 of the Health and Safety Code] are confidential and may not be released or made public except:

¹We note that although the department did not timely request an open records decision from this office as required by section 552.301 of the Government Code, the resulting legal presumption that the requested information is public is overcome by a demonstration that the information is deemed confidential by law. See Open Records Decision No. 150 (1977).

- (1) to a state or federal agency;
- (2) to federal, state, or local law enforcement personnel;
- (3) with the consent of each person identified in the information released;
- (4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule; or
- (5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency.

We have reviewed the document for which you assert section 142.009(d) of the Health and Safety Code in conjunction with section 552.101 of the Government Code. We have no reason to believe that any of the exceptions to confidentiality in section 141.009(d) apply in this instance to the requested "Report of Contact."² We therefore conclude that the department must withhold this document from the requestor in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

²Although you inquire whether the requestor, who is also the patient at issue in the Report of Contact report, would have a special right of access to the report, you have not adequately briefed us on this issue. Section 552.023 of the Government Code provides that information may not be withheld from an individual to whom the information relates pursuant to a law that is solely intended to protect that individual's privacy interests. It is not clear to this office, and you have not informed us otherwise, that the only purpose of the confidentiality imposed by section 142.009(d) is to protect the patient's privacy interests. We note, however, that the patient would have a right of access to the de-identified state form contemplated by section 142.009(d)(5) as well as the de-identified HCFA 2567 forms.

VDP/RWP/glg

Ref.: ID# 114480

Enclosures: Submitted documents